

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

CAROLINE MAYORGA ON BEHALF OF HERSELF
AND ALL OTHERS SIMILARLY SITUATED,

PLAINTIFF,

vs.

FIRST RESOLUTION INVESTMENT
CORPORATION, SHARINN & LIPSHIE, P.C.,
CHRISTOPHER VOLPE, RONALD LIPSHIE,
HARVEY SHARINN, ANGEL PAGE, JOHN DOES
#1-10,

DEFENDANTS,

STATE OF NEW YORK)

COUNTY OF ERIE) ss.:

**AFFIDAVIT OF
COMPLIANCE**

Case No.:

for the miscellaneous
action to quash subpoena
in the United States
District Court for the
Western District of New
York .

Case No.:

12-CV-00587-DLI-VVP
Currently pending in the
United States District
Court for the Eastern
District of New York.

TROY S. FLASCHER, ESQ., being duly sworn deposes and says:

1. I am an attorney and counselor at law admitted to practice in the State of New York and in the United States District Court for the Western District of New York, and I am associated with Goldberg Segalla, LLP, attorneys for non-party Dubin & Dubin LLP (hereafter "D&D").

2. This Affidavit is submitted in support of D&D's motion to quash, pursuant to FED.R.CIV.P. 45(c)(3)(a), the non-party subpoena duces tecum (hereinafter "Subpoena") annexed as Exhibit A to the Affidavit of Robert J. Dubin, Esq.

3. Pursuant to Rule 26(c)(1)(a) of the Federal Rules of Civil Procedure, I have conferred with counsel for the plaintiff, Michael N. Litrownik, Esq., regarding the discovery dispute at issue herein. On April 5, 2013, your deponent discussed an identical Subpoena with the exception that it was issued out of the Eastern District of New York. This prior Subpoena was withdrawn after my call with Mr. Litrownik.

4. Shortly thereafter, the Subpoena was reissued out of the Western District of New York. Annexed hereto as **Exhibit A** is our May 13, 2013, correspondence objecting to the Subpoena. This letter requests that counsel for the plaintiff call your deponent to discuss the Subpoena and our objections thereto. On May 14, 2013, your deponent called Mr. Litrownik seeking to discuss the reissued Subpoena. As he was not available your deponent left a message asking him to call me about the Subpoena and our intention to file a motion to quash. To date no further call or communication has been had with counsel for the plaintiff.

5. Thus, your deponent has engaged in more than one good faith effort to resolve this discovery dispute.

Dated: Buffalo, New York
May 15, 2013

By:

Troy S. Flascher, Esq.
GOLDBERG SEGALLA LLP
Attorneys for Dubin & Dubin LLP
665 Main Street, Suite 400
Buffalo NY 14203
Phone: (716) 566-5400
Cell: (716) 844-3417
tflascher@goldbergsegalla.com

Sworn to before me this 16th
day of May, 2013

JULIE G. SYMACK
Notary Public

Notary Public, State of New York
Qualified in
My Commission Expires

JULIE G. SYMACK
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 01/03/2015

1036064.1

Exhibit

“A”



Troy S. Flascher | Attorney at Law
Direct 716.844.3417 | tflascher@goldbergsegalla.com

May 13, 2013

Via Email and Regular U.S. Mail

Brian L. Bromberg, Esq.
brian@brianbromberg.com
Bromberg Law Office, P.C.
40 Exchange Place, Suite 2010
New York, New York 10005

Nasoan Channa Sheftel-Gomes
nsheftel-gomes@urbanjustice.org
Urban Justice Center
123 William Street, 16th Floor
New York, New York 10035

Ahmad Keshavarz, Esq.
ahmad@newyorkconsumerattorney.com
The Law Offices of Ahmad Keshavarz
16 Court St., 26th Floor
Brooklyn, New York 11241

Harvey David Epstein, Esq.
hepstein@urbanjustice.org
Urban Justice Center
123 William Street, 16th Floor
New York, New York 10035

Michael Noah Litrownik
mike@bromberglawoffice.com
40 Exchange Place, Suite 2010
New York, New York 10005

**Re: Caroline Mayorga v. First Resolution Investment Corp. et al
Index No. 12-cv-00587-DLI-VVP
Our File No.: Pending**

Dear Counselors:

We have been retained to represent Dubin & Dubin, LLP, with respect to the non-party *subpoena duces tecum* dated April 29, 2013, issued out of the United States District Court for the Western District of New York in the above referenced litigation.

Pursuant to FRCP 45(c)(2)(B) we hereby object to this subpoena for the following reasons: (1) it is premature in light of the underlying litigation; (2) It seeks privileged materials or communications and/or work product contained in the legal files of Dubin & Dubin; (3) It seeks materials that are irrelevant in light of the parties and causes of action at issue in the above referenced litigation and under the scope of discovery permitted by FRCP 26; (4) It is unduly burdensome on a solo-practitioner and small office such as Dubin & Dubin; (5) Some of its terms and/or provisions are ill defined, overbroad, and ambiguous or unduly vague; (6) It appears that the subpoena was issued while there is a pending demand to arbitrate the underlying litigation; (7) The production of some or all of the records sought may constitute a violation of the Fair Debt Collection Practices Act and/or other laws and/or professional ethical obligations and duties; (8) Because First Resolution Investment Corp. has not waived its right to privilege with respect to some or all of the records sought; (9) Because the discovery sought appears designed to identify further potential claimants and not to prosecute the

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pending action; (10) Because some of the records sought are in the public record and may be obtained directly by the plaintiff or her counsel without the involvement of Dubin & Dubin, LLP; and (11) Because it appears the subpoena was served notwithstanding the pending motion to dismiss challenging the subject matter jurisdiction of the court.

For the foregoing reasons we are hereby requesting that you promptly withdraw the subpoena. We are also requesting that one of you call the undersigned to discuss the subpoena. If we do not receive prompt confirmation that the subpoena is withdrawn it is our intention to promptly file a motion for an order of protection and/or to quash the subpoena.

Very truly yours,


Troy S. Flascher